

HB0180S01 compared with HB0180

~~{deleted text}~~ shows text that was in HB0180 but was deleted in HB0180S01.

Inserted text shows text that was not in HB0180 but was inserted into HB0180S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Kim F. Coleman proposes the following substitute bill:

AGRICULTURE AND INDUSTRIAL PROTECTION AREAS

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kim F. Coleman

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions in Title 17, Chapter 41, Agriculture and Industrial Protection Areas.

Highlighted Provisions:

This bill:

- ▶ ~~{establishes a process by which a person may challenge a}~~amends a definition of "land use regulation" to bring certain actions of applicable legislative bodies within a land use appeal process;
- ▶ requires an applicable legislative ~~{body's rejection of}~~body to approve a proposal to create an agriculture protection area, industrial protection area, or mining protection

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area under certain circumstances; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

~~{ENACTS:~~

~~———— 17-41-308, Utah Code Annotated 1953~~

~~———— 17-41-309, Utah Code Annotated 1953}~~ AMENDS:

10-9a-103, as last amended by Laws of Utah 2018, Chapters 339 and 415

17-27a-103, as last amended by Laws of Utah 2018, Chapters 339 and 415

17-41-304, as last amended by Laws of Utah 2010, Chapter 90

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 10-9a-103 is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, property owner, property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body

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designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; or

(iii) an entity that is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(b) "Charter school" does not include a therapeutic school.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one

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or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (10)(a)(i); and

(B) used in support of the purposes of a building described in Subsection (10)(a)(i); or

(ii) a therapeutic school.

(11) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(12) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the

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Federal Emergency Management Agency.

(13) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

(14) "Geologic hazard" means:

- (a) a surface fault rupture;
- (b) shallow groundwater;
- (c) liquefaction;
- (d) a landslide;
- (e) a debris flow;
- (f) unstable soil;
- (g) a rock fall; or
- (h) any other geologic condition that presents a risk:
 - (i) to life;
 - (ii) of substantial loss of real property; or
 - (iii) of substantial damage to real property.

(15) "Historic preservation authority" means a person, board, commission, or other body designated by a legislative body to:

- (a) recommend land use regulations to preserve local historic districts or areas; and
- (b) administer local historic preservation land use regulations within a local historic district or area.

(16) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance that connects to a municipal water, sewer, storm water, power, or other utility system.

(17) "Identical plans" means building plans submitted to a municipality that:

- (a) are clearly marked as "identical plans";
- (b) are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality; and
- (c) describe a building that:
 - (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
 - (ii) is subject to the same geological and meteorological conditions and the same law

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as the building described in the previously approved plans;

(iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the municipality; and

(iv) does not require any additional engineering or analysis.

(18) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(19) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a municipality to guaranty the proper completion of landscaping or an infrastructure improvement required as a condition precedent to:

(a) recording a subdivision plat; or

(b) development of a commercial, industrial, mixed use, or multifamily project.

(20) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

(a) complies with the municipality's written standards for design, materials, and workmanship; and

(b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(21) "Improvement warranty period" means a period:

(a) no later than one year after a municipality's acceptance of required landscaping; or

(b) no later than one year after a municipality's acceptance of required infrastructure, unless the municipality:

(i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and

(ii) has substantial evidence, on record:

(A) of prior poor performance by the applicant; or

(B) that the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.

(22) "Infrastructure improvement" means permanent infrastructure that an applicant must install:

(a) pursuant to published installation and inspection specifications for public

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improvements; and

(b) as a condition of:

(i) recording a subdivision plat; or

(ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(23) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

(a) runs with the land; and

(b) (i) creates a restriction that is enclosed within the perimeter of a lot described on the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(24) "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

(25) "Land use application":

(a) means an application that is:

(i) required by a municipality; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

(26) "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

(27) "Land use decision" means an administrative decision of a land use authority or appeal authority regarding:

(a) a land use permit;

(b) a land use application; or

(c) the enforcement of a land use regulation, land use permit, or development agreement.

(28) "Land use permit" means a permit issued by a land use authority.

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(29) "Land use regulation":

(a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;

(b) includes:

(i) the adoption or amendment of a zoning map or the text of the zoning code; and

(ii) the approval or rejection of a proposal to create an agriculture protection area, an industrial protection area, or a mining protection area under Title 17, Chapter 41, Agriculture and Industrial Protection Areas; and

(c) does not include:

(i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or

(ii) a temporary revision to an engineering specification that does not materially:

(A) increase a land use applicant's cost of development compared to the existing specification; or

(B) impact a land use applicant's use of land.

(30) "Legislative body" means the municipal council.

(31) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(32) "Local historic district or area" means a geographically definable area that:

(a) contains any combination of buildings, structures, sites, objects, landscape features, archeological sites, or works of art that contribute to the historic preservation goals of a legislative body; and

(b) is subject to land use regulations to preserve the historic significance of the local historic district or area.

(33) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(34) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the city is located.

(35) "Nominal fee" means a fee that reasonably reimburses a municipality only for time

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spent and expenses incurred in:

- (a) verifying that building plans are identical plans; and
- (b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(36) "Noncomplying structure" means a structure that:

- (a) legally existed before its current land use designation; and
- (b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

(37) "Nonconforming use" means a use of land that:

- (a) legally existed before its current land use designation;
- (b) has been maintained continuously since the time the land use ordinance governing the land changed; and
- (c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(38) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

- (a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;
- (b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and
- (c) has been adopted as an element of the municipality's general plan.

(39) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

- (a) no additional parcel is created; and
- (b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

(40) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(41) "Plan for moderate income housing" means a written document adopted by a city

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legislative body that includes:

- (a) an estimate of the existing supply of moderate income housing located within the city;
- (b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;
- (c) a survey of total residential land use;
- (d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and
- (e) a description of the city's program to encourage an adequate supply of moderate income housing.

(42) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

(43) "Potential geologic hazard area" means an area that:

- (a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or
- (b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(44) "Public agency" means:

- (a) the federal government;
- (b) the state;
- (c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or
- (d) a charter school.

(45) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(46) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(47) "Receiving zone" means an area of a municipality that the municipality designates, by ordinance, as an area in which an owner of land may receive a transferable

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development right.

(48) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(49) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(50) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

(51) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(52) "Sending zone" means an area of a municipality that the municipality designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

(53) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(54) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(55) "State" includes any department, division, or agency of the state.

(56) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(57) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be

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divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (57)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(v) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vi) a parcel boundary adjustment.

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(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (57) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

(58) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

(59) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

(60) "Transferable development right" means a right to develop and use land that originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

(61) "Unincorporated" means the area outside of the incorporated area of a city or town.

(62) "Water interest" means any right to the beneficial use of water, including:

(a) each of the rights listed in Section 73-1-11; and

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(b) an ownership interest in the right to the beneficial use of water represented by:

(i) a contract; or

(ii) a share in a water company, as defined in Section 73-3-3.5.

(63) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section 17-27a-103 is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) (a) "Charter school" means:

(i) an operating charter school;

(ii) a charter school applicant that has its application approved by a charter school authorizer in accordance with Title 53G, Chapter 5, Part 3, Charter School Authorization; or

(iii) an entity that is working on behalf of a charter school or approved charter

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applicant to develop or construct a charter school building.

(b) "Charter school" does not include a therapeutic school.

(5) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution, Article I, Section 22.

(8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(11) "Educational facility":

(a) means:

(i) a school district's building at which pupils assemble to receive instruction in a

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program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities;

(ii) a structure or facility:

(A) located on the same property as a building described in Subsection (11)(a)(i); and

(B) used in support of the use of that building; and

(iii) a building to provide office and related space to a school district's administrative personnel; and

(b) does not include:

(i) land or a structure, including land or a structure for inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or similar use that is:

(A) not located on the same property as a building described in Subsection (11)(a)(i);

and

(B) used in support of the purposes of a building described in Subsection (11)(a)(i); or

(ii) a therapeutic school.

(12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

(13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

(14) "Gas corporation" has the same meaning as defined in Section 54-2-1.

(15) "General plan" means a document that a county adopts that sets forth general guidelines for proposed future development of:

(a) the unincorporated land within the county; or

(b) for a mountainous planning district, the land within the mountainous planning district.

(16) "Geologic hazard" means:

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- (a) a surface fault rupture;
- (b) shallow groundwater;
- (c) liquefaction;
- (d) a landslide;
- (e) a debris flow;
- (f) unstable soil;
- (g) a rock fall; or
- (h) any other geologic condition that presents a risk:
 - (i) to life;
 - (ii) of substantial loss of real property; or
 - (iii) of substantial damage to real property.

(17) "Hookup fee" means a fee for the installation and inspection of any pipe, line, meter, or appurtenance to connect to a county water, sewer, storm water, power, or other utility system.

(18) "Identical plans" means building plans submitted to a county that:

- (a) are clearly marked as "identical plans";
- (b) are substantially identical building plans that were previously submitted to and reviewed and approved by the county; and
- (c) describe a building that:
 - (i) is located on land zoned the same as the land on which the building described in the previously approved plans is located;
 - (ii) is subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans;
 - (iii) has a floor plan identical to the building plan previously submitted to and reviewed and approved by the county; and
 - (iv) does not require any additional engineering or analysis.

(19) "Impact fee" means a payment of money imposed under Title 11, Chapter 36a, Impact Fees Act.

(20) "Improvement completion assurance" means a surety bond, letter of credit, financial institution bond, cash, assignment of rights, lien, or other equivalent security required by a county to guaranty the proper completion of landscaping or an infrastructure improvement

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required as a condition precedent to:

- (a) recording a subdivision plat; or
- (b) development of a commercial, industrial, mixed use, or multifamily project.

(21) "Improvement warranty" means an applicant's unconditional warranty that the applicant's installed and accepted landscaping or infrastructure improvement:

- (a) complies with the county's written standards for design, materials, and workmanship; and
- (b) will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period.

(22) "Improvement warranty period" means a period:

- (a) no later than one year after a county's acceptance of required landscaping; or
- (b) no later than one year after a county's acceptance of required infrastructure, unless the county:
 - (i) determines for good cause that a one-year period would be inadequate to protect the public health, safety, and welfare; and
 - (ii) has substantial evidence, on record:
 - (A) of prior poor performance by the applicant; or
 - (B) that the area upon which the infrastructure will be constructed contains suspect soil and the county has not otherwise required the applicant to mitigate the suspect soil.

(23) "Infrastructure improvement" means permanent infrastructure that an applicant must install:

- (a) pursuant to published installation and inspection specifications for public improvements; and
- (b) as a condition of:
 - (i) recording a subdivision plat; or
 - (ii) development of a commercial, industrial, mixed use, condominium, or multifamily project.

(24) "Internal lot restriction" means a platted note, platted demarcation, or platted designation that:

- (a) runs with the land; and
- (b) (i) creates a restriction that is enclosed within the perimeter of a lot described on

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the plat; or

(ii) designates a development condition that is enclosed within the perimeter of a lot described on the plat.

(25) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(26) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

(27) "Land use applicant" means a property owner, or the property owner's designee, who submits a land use application regarding the property owner's land.

(28) "Land use application":

(a) means an application that is:

(i) required by a county; and

(ii) submitted by a land use applicant to obtain a land use decision; and

(b) does not mean an application to enact, amend, or repeal a land use regulation.

(29) "Land use authority" means:

(a) a person, board, commission, agency, or body, including the local legislative body, designated by the local legislative body to act upon a land use application; or

(b) if the local legislative body has not designated a person, board, commission, agency, or body, the local legislative body.

(30) "Land use decision" means an administrative decision of a land use authority or appeal authority regarding:

(a) a land use permit;

(b) a land use application; or

(c) the enforcement of a land use regulation, land use permit, or development agreement.

(31) "Land use permit" means a permit issued by a land use authority.

(32) "Land use regulation":

(a) means a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land;

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(b) includes:

(i) the adoption or amendment of a zoning map or the text of the zoning code; and

(ii) the approval or rejection of a proposal to create an agriculture protection area, an industrial protection area, or a mining protection area under Title 17, Chapter 41, Agriculture and Industrial Protection Areas; and

(c) does not include:

(i) a land use decision of the legislative body acting as the land use authority, even if the decision is expressed in a resolution or ordinance; or

(ii) a temporary revision to an engineering specification that does not materially:

(A) increase a land use applicant's cost of development compared to the existing specification; or

(B) impact a land use applicant's use of land.

(33) "Legislative body" means the county legislative body, or for a county that has adopted an alternative form of government, the body exercising legislative powers.

(34) "Local district" means any entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or the state.

(35) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

(36) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the median gross income for households of the same size in the county in which the housing is located.

(37) "Mountainous planning district" means an area:

(a) designated by a county legislative body in accordance with Section 17-27a-901; and

(b) that is not otherwise exempt under Section 10-9a-304.

(38) "Nominal fee" means a fee that reasonably reimburses a county only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

(39) "Noncomplying structure" means a structure that:

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(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations that govern the use of land.

(40) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance regulation governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

(41) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the county's general plan.

(42) "Parcel boundary adjustment" means a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(a) no additional parcel is created; and

(b) each property identified in the agreement is unsubdivided land, including a remainder of subdivided land.

(43) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

(44) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the county;

(b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;

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(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

(45) "Planning advisory area" means a contiguous, geographically defined portion of the unincorporated area of a county established under this part with planning and zoning functions as exercised through the planning advisory area planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority.

(46) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

(47) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

(48) "Public agency" means:

(a) the federal government;

(b) the state;

(c) a county, municipality, school district, local district, special service district, or other political subdivision of the state; or

(d) a charter school.

(49) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

(50) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

(51) "Receiving zone" means an unincorporated area of a county that the county designates, by ordinance, as an area in which an owner of land may receive a transferable

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development right.

(52) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

(53) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) which is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) which is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

(54) "Rules of order and procedure" means a set of rules that govern and prescribe in a public meeting:

(a) parliamentary order and procedure;

(b) ethical behavior; and

(c) civil discourse.

(55) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

(56) "Sending zone" means an unincorporated area of a county that the county designates, by ordinance, as an area from which an owner of land may transfer a transferable development right.

(57) "Site plan" means a document or map that may be required by a county during a preliminary review preceding the issuance of a building permit to demonstrate that an owner's or developer's proposed development activity meets a land use requirement.

(58) "Specified public agency" means:

(a) the state;

(b) a school district; or

(c) a charter school.

(59) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

(60) "State" includes any department, division, or agency of the state.

(61) "Street" means a public right-of-way, including a highway, avenue, boulevard,

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parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

(62) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection (62)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an electrical transmission line or a substation;

(B) a natural gas pipeline or a regulation station; or

(C) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility;

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

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(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance;

(vi) a bona fide division or partition of land by deed or other instrument where the land use authority expressly approves in writing the division in anticipation of further land use approvals on the parcel or parcels; or

(vii) a parcel boundary adjustment.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection (62) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

(63) "Suspect soil" means soil that has:

(a) a high susceptibility for volumetric change, typically clay rich, having more than a 3% swell potential;

(b) bedrock units with high shrink or swell susceptibility; or

(c) gypsiferous silt and clay, gypsum, or bedrock units containing abundant gypsum commonly associated with dissolution and collapse features.

(64) "Therapeutic school" means a residential group living facility:

(a) for four or more individuals who are not related to:

(i) the owner of the facility; or

(ii) the primary service provider of the facility;

(b) that serves students who have a history of failing to function:

(i) at home;

(ii) in a public school; or

(iii) in a nonresidential private school; and

(c) that offers:

(i) room and board; and

(ii) an academic education integrated with:

(A) specialized structure and supervision; or

(B) services or treatment related to a disability, an emotional development, a behavioral development, a familial development, or a social development.

(65) "Transferable development right" means a right to develop and use land that

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originates by an ordinance that authorizes a land owner in a designated sending zone to transfer land use rights from a designated sending zone to a designated receiving zone.

(66) "Unincorporated" means the area outside of the incorporated area of a municipality.

(67) "Water interest" means any right to the beneficial use of water, including:

- (a) each of the rights listed in Section 73-1-11; and
- (b) an ownership interest in the right to the beneficial use of water represented by:
 - (i) a contract; or
 - (ii) a share in a water company, as defined in Section 73-3-3.5.

(68) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 3. Section 17-41-304 is amended to read:

17-41-304. Public hearing -- Review and action on proposal.

(1) After receipt of the written reports from the advisory committee and planning commission, or after the 45 days have expired, whichever is earlier, the county or municipal legislative body shall:

- (a) schedule a public hearing;
- (b) provide notice of the public hearing by:
 - (i) publishing notice:

(A) in a newspaper having general circulation within ~~the~~

~~the~~ ~~(H)~~ ~~the~~ the same county as the land proposed for inclusion within the agriculture protection area or industrial protection area, if the land is within the unincorporated part of the county ~~;~~ ~~or~~

~~the~~ ~~(H)~~ ~~the~~ or the same city or town as the land proposed for inclusion within an agriculture protection area or industrial protection area, if the land is within a city or town; and

(B) on the Utah Public Notice Website created in Section 63F-1-701;

(ii) posting notice at five public places ~~;~~ ~~designated by~~ that the applicable legislative body designates, within or near the proposed agriculture protection area or industrial protection area; and

(iii) mailing written notice to each owner of land within 1,000 feet of the land proposed for inclusion within an agriculture protection area or industrial protection area; and

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- (c) ensure that the notice includes:
 - (i) the time, date, and place of the public hearing on the proposal;
 - (ii) a description of the proposed agriculture protection area or industrial protection area;
 - (iii) any proposed modifications to the proposed agriculture protection area or industrial protection area;
 - (iv) a summary of the recommendations of the advisory committee and planning commission; and
 - (v) a statement that interested persons may appear at the public hearing and speak in favor of or against the proposal, any proposed modifications to the proposal, or the recommendations of the advisory committee and planning commission.
- (2) The applicable legislative body shall:
 - (a) convene the public hearing at the time, date, and place specified in the notice; and
 - (b) take verbal or written testimony from interested persons.
- (3) (a) Within 120 days of the submission of the proposal and subject to Subsection (3)(c), the applicable legislative body shall approve, modify and approve, or reject the proposal.
- (b) The creation of an agriculture protection area or industrial protection area is effective at the earlier of:
 - (i) the applicable legislative body's approval of a proposal or modified proposal; or
 - (ii) 120 days after submission of a proposal complying with Subsection 17-41-301(2) if the applicable legislative body has failed to approve or reject the proposal within that time.
- (c) If the advisory committee and planning commission have both recommended approval of an agricultural protection area, the legislative body may not reject the proposal unless the legislative body finds that the existence of the agricultural protection area would significantly interfere with the goals and objectives of the general plan or an official map adopted under Section 10-9a-407 or 17-27a-407.
- (4) (a) In order to give constructive notice of the existence of the agriculture protection area or industrial protection area to all persons who have, may acquire, or may seek to acquire an interest in land in or adjacent to the agriculture protection area or industrial protection area, respectively, within 10 days of the creation of an agriculture protection area or industrial protection area, the applicable legislative body shall file an executed document containing a

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legal description of the agriculture protection area or industrial protection area, as the case may be, with:

- (i) the county recorder of deeds; and
- (ii) the affected planning commission.

(b) If the legal description of the property to be included in the agriculture protection area or industrial protection area is available through the county recorder's office, the applicable legislative body shall use that legal description in its executed document required in Subsection (4)(a).

(5) Within 10 days of the recording of the agriculture protection area, the applicable legislative body shall:

(a) send written notification to the commissioner of agriculture and food that the agriculture protection area has been created; and

(b) include in the notification:

- (i) the number of landowners owning land within the agriculture protection area;
- (ii) the total acreage of the area;
- (iii) the date of approval of the area; and
- (iv) the date of recording.

(6) The applicable legislative body's failure to record the notice required under Subsection (4) or to send the written notification under Subsection (5) does not invalidate the creation of an agriculture protection area.

(7) The applicable legislative body may consider the cost of recording notice under Subsection (4) and the cost of sending notification under Subsection (5) in establishing a fee under Subsection 17-41-301(4)(b).

~~{ Section 1. Section 17-41-308 is enacted to read:~~

~~—— 17-41-308. District court review.~~

~~—— (1) As used in this section, "affected person" means a person who signs a proposal under Subsection 17-41-301(1)(b).~~

~~—— (2) No later than 30 days after the day on which an applicable legislative body rejects a proposal under Subsection 17-41-304(3)(a), an affected person may challenge the applicable legislative body's rejection by filing a petition for review with the district court.~~

~~—— (3) When reviewing a challenge described in Subsection (2), a court shall:~~

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- ~~—— (a) presume that a rejection of a proposal to create an agriculture protection area, industrial protection area, or mining protection area under the authority of this chapter is valid;~~
- ~~—— (b) determine only whether the rejection is:~~
 - ~~—— (i) arbitrary and capricious; or~~
 - ~~—— (ii) illegal; and~~
- ~~—— (c) uphold the rejection unless the rejection is:~~
 - ~~—— (i) arbitrary and capricious; or~~
 - ~~—— (ii) illegal.~~
- ~~—— (4) An applicable legislative body's rejection is:~~
 - ~~—— (a) arbitrary and capricious if:~~
 - ~~—— (i) the rejection is not supported by substantial evidence in the record; or~~
 - ~~—— (ii) it is reasonably debatable that the agriculture protection area, industrial protection area, or mining protection area is consistent with this chapter; and~~
 - ~~—— (b) illegal if the rejection is:~~
 - ~~—— (i) based on an incorrect interpretation of this chapter; or~~
 - ~~—— (ii) expressly preempted by or contrary to state or federal law.~~
- ~~—— (5) (a) An applicable legislative body shall transmit to the reviewing court the record of the applicable legislative body's proceedings, including minutes, findings, orders, and, if available, a true and correct transcript of the applicable legislative body's proceeding.~~
- ~~—— (b) If an applicable legislative body's proceeding is recorded, a transcript of that recording is a true and correct transcript for the purposes of this Subsection (5).~~
- ~~—— (6) (a) (i) If there is a record, the district court's review is limited to the record that the applicable legislative body provides.~~
- ~~—— (ii) The court may not accept or consider any evidence outside the record of the applicable legislative body unless:~~
 - ~~—— (A) the evidence was offered to the applicable legislative body; and~~
 - ~~—— (B) the court determines that the applicable legislative body improperly excluded the evidence.~~
- ~~—— (b) If there is no record, the court may call witnesses and take evidence.~~
- ~~—— Section 2. Section 17-41-309 is enacted to read:~~
- ~~—— 17-41-309. Enforcement.~~

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~~———— (1) A county, municipality, or any adversely affected person in the county or municipality in which a violation of this chapter or ordinances enacted under the authority of this chapter occur or are about to occur may, in addition to other remedies provided by law, institute injunctions, mandamus, abatement, or any other appropriate actions.~~

~~———— (2) A county or municipality need only establish the violation to obtain an injunction described in Subsection (1).~~

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